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101st Congress, 1st Session - - - - - - - - - - House Document 101-27

UNITED STATES-SWITZERLAND SUPPLEMENTARY SOCIAL SECURITY AGREEMENT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE SUPPLEMENTARY AGREEMENT AMENDING THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY ("SUPPLEMENTARY AGREEMENT"), WHICH CONSISTS OF TWO SEPARATE INSTRUMENTS—A PRINCIPAL AGREEMENT AND AN ADMINISTRATIVE AGREEMENT, PURSUANT TO 42 U.S.C. 433(e)(1)

FEBRUARY 22, 1989.—Message and accompanying papers referred to the Committee on Ways and Means and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

29-011 WASHINGTON : 1989

H780-1

To the Congress of the United States:

Pursuant to Section 233(e)(1) of the Social Security Act, as amended by the Social Security Amendments of 1977 (P.L. 95-216, 42 U.S.C. 433(e)(1)), I transmit herewith the Supplementary Agreement Amending the Agreement between the United States of America and the Swiss Confederation on Social Security ("Supplementary Agreement"), which consists of two separate instruments—a principal agreement and an administrative agreement. The Supplementary Agreement was signed at Bern on June 1, 1988.

The United States-Switzerland agreement is similar in objective to the social security agreements in force in Belgium, Canada, France, the Federal Republic of Germany, Italy, Norway, Spain, Sweden, and the United Kingdom. Such bilateral agreements provide for limited coordination between the United States and foreign social security systems to overcome the problems of gaps in protection and of dual coverage and taxation for workers who move from one country to the other. The present Supplementary Agreement would amend the original agreement with Switzerland to update and simplify several of its provisions in view of changes in United States and Swiss law and to simplify the method of computing United States benefit amounts.

I also transmit for the information of the Congress a comprehensive report prepared by the Department of Health and Human Services, which explains the provisions of the Supplementary Agreement and the effect on social security financing as required by the same provision of the Social Security Act. I note that the Department of State and the Department of Health and Human Services have recommended the Supplementary Agreement and related documents to me.

I commend the United States-Switzerland Supplementary Social Security Agreement and related documents.

GEORGE BUSH.

THE WHITE HOUSE, *February 21, 1989.*

SUPPLEMENTARY AGREEMENT
AMENDING THE AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND THE SWISS CONFEDERATION
ON SOCIAL SECURITY

The Government of the United States of America and
the Swiss Federal Council,

Having considered the Agreement between the United States of America and the Swiss Confederation on Social Security signed July 18, 1979, (hereinafter referred to as the "Agreement"), and

Having recognized the need to revise certain provisions of the Agreement,

Have agreed as follows:

Article 1

Article 6 of the Agreement shall be revised to read as follows:

"1. Unless otherwise provided in Part III of this Agreement or the Final Protocol, a person of any nationality who is employed in the territory of either Contracting State shall be subject, with respect to employment in that territory, to the laws on compulsory coverage of the Contracting State where the person is employed, and, in determining the amount of contributions payable under the laws of that Contracting State, no account shall be taken of any income the person may receive from employment in the territory of the other Contracting State.

2. Where a person of any nationality is in the service of an employer having a place of business in the territory of a Contracting State and is sent by that employer to the territory of the other Contracting State for a period not expected to exceed 5 years, the person shall be subject to the laws on compulsory coverage of only the first Contracting State as if he were employed in its territory. If, before the end of 5 years, the employer who requested an exemption for a person

on temporary assignment requests an extension of the period of exemption, this extension may be granted by way of exception if the Competent Authority of the State from whose territory the person was sent considers the request to be justified and, based on this fact, presents the application for extension to the Competent Authority of the other Contracting State and obtains the consent of the latter State. The spouse and children who accompany a person who is sent temporarily in conformity with the preceding two sentences of this paragraph shall remain subject to the laws on compulsory coverage of only the State from whose territory the worker was sent for any period during which they are not employed or self-employed in the territory of the other State.

3. A person of any nationality who is self-employed in the territory of either Contracting State and who is a resident of one Contracting State shall be subject to the laws on compulsory coverage of only the Contracting State in whose territory he resides."

Article 2

In Article 8 of the Agreement, the words "employed or self-employed" shall be deleted.

Article 3

1. Paragraph 3 of Article 13 of the Agreement shall be revised to read as follows:

"3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount."

2. Paragraph 4 of Article 13 of the Agreement shall be deleted.

Article 4

In the Final Protocol to the Agreement:

1. Paragraphs 3 and 4 shall be deleted.

2. The following paragraph shall be added immediately after paragraph 5:

"5A. Where the same activity is considered to be self-employment under the laws of one Contracting State and employment under the laws of the other Contracting State, that activity shall be treated according to the provisions of Article 6.3 if the person is a resident of the first Contracting State and according to the provisions of Article 6.1 or 6.2 in any other case."

Article 5

1. The third sentence of paragraph 2 of Article 6 of the Agreement, as revised by this Supplementary Agreement, shall apply as though it had been included in the Agreement from the date the Agreement entered into force.

2. Article 3 of this Supplementary Agreement shall apply to any application for benefits filed in accordance with the Agreement, provided that no final decision has been made on such application in accordance with United States laws by the date on which this Supplementary Agreement enters into force.

3. Article 3 of this Supplementary Agreement shall also apply as of the date it enters into force to any recomputation of benefits which are payable under the Agreement.

Article 6

1. The Government of each of the Contracting States shall notify the other in writing of the fulfillment of its statutory and constitutional requirements for the entry into force of this Supplementary Agreement; this Supplementary Agreement shall enter into force on the first day of the month following the date of receipt of the last of these notifications.

2. This Supplementary Agreement shall remain in force for the same period and under the same conditions as the Agreement.

DONE at Bern on June 1, 1988, in duplicate, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Jessica Rogers Whiteley

FOR THE SWISS FEDERAL COUNCIL:

Verena Brombacher

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT AMENDING THE ADMINISTRATIVE AGREEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY

In conformity with Article 14, paragraph (a), of the Agreement between the United States of America and the Swiss Confederation on Social Security of July 16, 1979 (hereinafter referred to as the "Agreement"), as amended by the Supplementary Agreement of June 1, 1988

Amendments to the Administrative Agreement for the Implementation of the Agreement, signed on December 20, 1979 (hereinafter referred to as the "Administrative Agreement"), have been agreed to as follows:

Article 1

Article 3, paragraph 3, of the Administrative Agreement shall be revised to read as follows:

"3. Requests for an extension of the period of detachment shall be submitted to the Competent Authority or, with its authorization, to the liaison agency of the Contracting State from whose territory the employee is sent. The Competent Authorities shall communicate their decisions to the appropriate agencies of their respective countries."

Article 2

Article 5 of the Administrative Agreement shall be revised to read as follows:

"In the application of Article 13 of the Agreement, the Swiss liaison agency shall notify the United States liaison agency of the months in which a person completed periods of coverage under Swiss laws. A record of the total number of months of coverage in specific calendar years shall be provided where the actual months of coverage are not known."

Article 3

This Supplementary Administrative Agreement shall enter into force on the date of entry into force of the Supplementary Agreement of June 1, 1988 amending the Agreement.

DONE at Bern on June 1, 1988 1988, in duplicate, in the English and French languages, both texts being equally authentic.

FOR THE UNITED STATES
DEPARTMENT OF HEALTH
AND HUMAN SERVICES:

David Rogan Waldesy

FOR THE SWISS
FEDERAL SOCIAL
INSURANCE OFFICE:

Verena Brombacher

REPORT TO CONGRESS TO ACCOMPANY THE SUPPLEMENTARY SOCIAL SECURITY AGREEMENT BETWEEN THE UNITED STATES AND SWITZERLAND

INTRODUCTION

The supplementary social security agreement between the United States and Switzerland is intended to modify certain provisions of the original U.S.-Swiss social security agreement (TIAS 9830), which was signed on July 18, 1979, and which entered into force on November 1, 1980. The original agreement, like other agreements the United States has concluded under authority contained in section 233 of the Social Security Act, eliminates dual social security coverage and taxation of the same work and helps prevent gaps in social security protection for workers who divide their careers between the two countries. Under the agreement, it is possible for workers to qualify for partial U.S. or Swiss benefits, called totalization benefits, based on combined work credits from both countries. Totalization benefit amounts are prorated based on the duration of a worker's coverage in the paying country.

The supplementary agreement, which was signed by representatives of the United States and Swiss Governments on June 1, 1988, would amend the original agreement to update and simplify several of its provisions. The amendments are necesary, in part, to take account of changes in U.S. and Swiss law that have occurred since the original agreement was implemented. The primary purpose of the supplementary agreement, however, is to authorize the United States to use a simplified method of computing U.S. totalization benefit amounts under the original agreement.

The supplementary agreement, which is now being submitted to Congress for review in accordance with section 233(e) of the Social Security Act, consists of two instruments:

(1) a supplementary principal agreement revising the original U.S.-Swiss agreement signed in 1979; and

(2) a supplementary administrative agreement which revises an administrative agreement signed on December 20, 1979, for implementation of the original agreement.

Accompanying this report is a paragraph-by-paragraph explanation of the supplementary agreement and supplementary administrative agreement (Annex A) and the estimate required by section 233(e)(1) on the effect of the supplementary agreement on income and expenditures of the U.S. Social Security program (Annex B). Also included (Annex C) is the paragraph-by-paragraph explanation of the original U.S.-Swiss agreement and administrative agreement that accompanied those instruments when submitted to the Congress for review in 1980 (reproduced as printed in House Document No. 96-261). Included as Annex D is a marked-up version of the original agreement and administrative agreement texts showing the changes that will be made as a result of the new instruments.

MAIN PROVISIONS

New U.S. Totalization Computation Method

The Social Security Administration took the initiative in proposing a revision of the original agreement in order to authorize the United States to use a simplified method of computing U.S. totalization benefit amounts. Under the original agreement, if a worker has at least six quarters of coverage under the U.S. Social Security program, the worker's coverage credits from both the United States and Switzerland can be totalized, i.e., combined, to qualify for a U.S. benefit. If entitlement is established based on totalized credits, the amount of the benefit is determined by combining earnings records from both countries to compute a theoretical U.S. benefit amount. This amount is then prorated to establish a partial benefit based on the ratio of periods of coverage completed in the United States to the total periods completed in both countries. This benefit computation method is the one used in the first three social security agreements concluded by the United States--i.e., those with Italy, the Federal Republic of Germany and Switzerland.

Experience has shown that using foreign earnings information to compute U.S. benefit amounts causes administrative difficulties for both the United States and its agreement partner and results in delays in adjudicating claims for U.S. benefits. Under a new computation method, which is now used under all of the United States' social security agreements except the one with Switzerland, totalization benefit amounts are computed based on periods of coverage and earnings credited exclusively under U.S. law. This computation procedure is described in detail in regulations promulgated by the Department of Health and Human Services (20 CFR 404.1918 as revised on July 24, 1984). Under this method, the United States computes the

theoretical benefit on the basis of a worker's earnings level during the period the worker was actually covered under U.S. Social Security. The theoretical benefit is then prorated to reflect the proportion of a coverage lifetime actually completed under the U.S. program. A coverage lifetime is defined in regulations as the number of the worker's benefit computation years, i.e., the years which are used in determining a worker's average earnings under the regular U.S. national computation method.

The supplementary agreement would revise the principal U.S.-Swiss agreement to permit the United States to use the new computation method. Under this method, the theoretical benefit would approximate the benefit amount to which the worker would have been entitled had he worked a full lifetime under the U.S. system at the same relative earnings level as during his actual periods of U.S. coverage. The pro rata benefit that would be payable would reflect the part of the worker's coverage lifetime spent under the U.S. system. The new method, which would shorten processing times and expedite the payment of totalization benefits, would result in approximately the same level of benefit payments as the original method.

Application of Coverage Rules to Third Country Nationals

In general, the provisions of the original agreement that eliminate dual social security coverage and taxation apply only to U.S. and Swiss nationals, and not to third country nationals. The supplementary agreement would amend the coverage rules by extending their application to all persons working in either country, regardless of nationality.

When the original agreement was negotiated, it was not considered necessary to apply the coverage provisions to third country nationals because they were unlikely to be subject to dual U.S.-Swiss coverage. As a result of the Social Security Amendments of 1983, however, U.S. resident aliens who are employed outside the United States by an American employer are compulsorily covered under the U.S. Social Security program. In addition, such persons are generally subject to Swiss social security coverage if they work in Switzerland. The supplementary agreement would eliminate dual coverage in this situation.

Swiss Noncontributory Coverage Credits

The supplementary agreement would permit the crediting under U.S. law of certain periods of Swiss noncontributory coverage. Under Swiss law, a person who is domiciled in Switzerland receives social security coverage credit even if the person

does not derive earnings from work. Although such persons must generally pay social security contributions (based on the amount of their assets and periodic income), the nonworking wife of a man who is covered under the Swiss social security system receives the coverage credit without being required to pay contributions. Under the supplementary agreement, SSA would take into account periods of noncontributory coverage credited to nonworking wives in Switzerland in determining eligibility for totalization benefits under the agreement.

ANNEX A

Annotations to the Supplementary Agreement
Amending the Agreement between the United States of America and the Swiss Confederation on Social Security

SUPPLEMENTARY AGREEMENT	ANNOTATIONS AND COMMENTS
SUPPLEMENTARY AGREEMENT AMENDING THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY	
The Government of the United States of America and the Swiss Federal Council, Having considered the Agreement between the United States of America and the Swiss Confederation on Social Security signed July 18, 1979, (hereinafter referred to as the "Agreement"), and Having recognized the need to revise certain provisions of the Agreement, Have agreed as follows:	This Supplementary Agreement will amend the U.S.-Swiss Social Security Agreement (32 UST 2165; TIAS 9830) that was signed on July 18, 1979, and which entered into force on November 1, 1980. A related Supplementary Administrative Agreement will amend the Administrative Agreement signed on December 20, 1979, for the implementation of the principal Agreement. The primary purpose of the Supplementary Agreement and related Supplementary Administrative Agreement is to authorize the United States to use a simplified method of computing benefit amounts under the original Agreement, to clarify the interpretation and intent of several provisions of the original Agreement, and to adapt the original Agreement to changes in U.S. and Swiss social security laws that have occurred since it was negotiated.
Article I Article 6 of the Agreement shall be revised to read as follows:	Article I of the Supplementary Agreement would make several amendments to Article 6 of the original U.S.-Swiss Social Security Agreement of 1979. Article 6 contains the basic provisions for eliminating dual coverage in situations where a worker in private employment or self-employment is covered under the laws of both countries with respect to the same services.

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"1. Unless otherwise provided in Part III of this Agreement or the Final Protocol, a person of any nationality who is employed in the territory of either Contracting State shall be subject, with respect to employment in that territory, to the laws on compulsory coverage of the Contracting State where the person is employed, and, in determining the amount of contributions payable under the laws of that Contracting State, no account shall be taken of any income the person may receive from employment in the territory of the other Contracting State.

2. Where a person of any nationality is in the service of an employer having a place of business in the territory of a Contracting State and is sent by that employer to the territory of the other Contracting State for a period not expected to exceed 5 years, the person shall be subject to the laws on compulsory coverage of only the first Contracting State as if he were employed in its territory. If, before the end of 5 years, the employer who requested an exemption for a person on temporary assignment requests an extension of the period of exemption, this extension may be granted by way of exception if the Competent Authority of the State from whose territory

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Article 6.1 of the original Agreement provides that a U.S. or Swiss national who works in employment in one country will be subject, with respect to that employment, to the social security coverage laws of only that country. In general, the provisions of the U.S.-Swiss Agreement, including Article 6, do not apply to third-country nationals. Article 1 of the Supplementary Agreement will amend the territoriality rule of Article 6.1 by extending its application to such persons.

This modification is necessary because of a recent change in U.S. law. When the original agreement was negotiated, it was not considered necessary to apply Article 6.1 to third-country nationals because they were unlikely to be subject to dual U.S.-Swiss coverage. As a result of the Social Security Amendments of 1983, however, U.S. resident aliens who are employed outside the United States by an American employer (or, in certain cases, the foreign affiliate of an American employer) are compulsorily covered under the U.S. Social Security program. In addition, such persons are generally subject to Swiss social security coverage if they work in Switzerland. Article 1 of the Supplementary Agreement will amend the territoriality rule in Article 6.1 of the original Agreement so that third-country nationals who are employed in Switzerland (other than those to whom Article 6.2 of the Agreement applies) will be exempt from U.S. coverage and contributions on the same basis as U.S. and Swiss nationals.

Article 6.2 of the original Agreement, which is an exception to the general territoriality rule in Article 6.1, provides that a person working for an employer in the United States or Switzerland who has been transferred to work in the other country for the same employer for a period of 5 years or less continues to be covered by the country from which he has been sent and is exempted from coverage by the other country. By virtue of paragraph 4 of the Final Protocol to the original Agreement, this rule has applied to a person who has been sent from Switzerland to work in the United States without regard to the person's nationality. The rule does not apply, however,

SUPPLEMENTARY AGREEMENT

the person was sent considers the request to be justified and, based on this fact, presents the application for extension to the Competent Authority of the other Contracting State and obtains the consent of the latter State. The spouse and children who accompany a person who is sent temporarily in conformity with the preceding two sentences of this paragraph shall remain subject to the laws on compulsory coverage of only the State from whose territory the worker was sent for any period during which they are not employed or self-employed in the territory of the other State.

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to third-country nationals who are sent from the United States to Switzerland. Thus, a third-country national who is sent by an employer in the United States to work temporarily in Switzerland could remain subject to coverage and contributions under both the U.S. and Swiss social security systems.

In view of changes in the law brought about by the Social Security Amendments of 1983, this restriction for the United States is no longer appropriate. The Supplementary Agreement will revise Article 6.2 of the Agreement so that third-country nationals who are sent from either country to the other will remain subject to coverage and contributions under the social security system of the country from which they have been sent and will be exempt from coverage and contributions under the system of the other country. (Since the revision to Article 6.2 renders paragraph 4 of the Final Protocol unnecessary, the latter provision is deleted by Article 4.1 of this Supplementary Agreement.)

The second sentence of Article 6.2, as revised by the Supplementary Agreement, is intended to clarify the procedures to be followed in cases where an employer and employee request an extension of the 5-year limit on transfers stipulated in Article 6.2. Article 6.2--both as originally drafted and as revised--provides that such extensions may be granted only if agreed to by the Competent Authorities of both Contracting States (i.e., the U.S. Secretary of Health and Human Services and the Swiss Federal Social Insurance Office). Extensions of the time limit have been agreed to, for example, in cases where an employee's transfer will last only a few months beyond 5 years, and the employee will return to and retire in the country from which he or she was sent at the end of the assignment. Article 3.3 of the Administrative Agreement for implementation of the principal Agreement stipulates that an employer and employee who wish to apply for an extension must submit a request to the Competent Authority or liaison agency of the country from which the employee is sent. If the Competent Authority or liaison agency which receives an extension request approves it, the authority or agency forwards it to the Competent Authority or liaison agency in the other country.

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The Swiss Justice Ministry has expressed concern that the present language of Article 6.2 of the principal Agreement and Article 3.3 of the Administrative Agreement could be interpreted to require a Competent Authority or liaison agency to forward an extension request even though that authority or agency had disapproved the request. The second sentence of Article 6.2, as revised by the Supplementary Agreement, is intended to make clear that this unnecessary and time-consuming procedure will not be required.

The last sentence of Article 6.2, as revised by Article I of the Supplementary Agreement, clarifies the social security coverage status of non-working family members who accompany employees who are sent temporarily from one country to the other in accordance with this paragraph. Such a family member will be subject to coverage and contributions under the social security laws of only the country from which the employee has been sent. If the family member undertakes work in the host country, however, he or she will be subject, in accordance with Article 6.1 of the Agreement, to the laws of only the host country (unless the family member qualifies for an exemption under another provision of the Agreement, such as Article 6.2, first sentence).

This new provision is important because Swiss social security law provides for coverage and contributions not only with respect to persons who work in Switzerland, but also with respect to non-working persons who are domiciled there. As a result, authorities in certain Swiss cantons have sought to assess social security contributions on non-working family members of employees who are temporarily transferred from the United States to Switzerland even though the employees themselves are exempt from Swiss contributions by virtue of Article 6.2. As a result of the revision and the effective date provided in Article 5.1 of the Supplementary Agreement, these family members will be exempt from Swiss contributions effective from November 1, 1980 (the original effective date of the U.S.-Swiss Agreement).

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3. A person of any nationality who is self-employed in the territory of either Contracting State and who is a resident of one Contracting State shall be subject to the laws on compulsory coverage of only the Contracting State in whose territory he resides."

Article 2

In Article 8 of the Agreement, the words "employed or self-employed" shall be deleted.

ANNOTATIONS AND COMMENTS

The revision will also make it possible for family members who accompany an employee who is temporarily transferred from Switzerland to the United States to continue to receive social security coverage credits under Swiss law provided they do not work while they are in the United States.

Article 1 of the Supplementary Agreement would also revise the rule regarding self-employment coverage contained in Article 6.3 of the Agreement so that it applies to third-country nationals as well as U.S. and Swiss nationals. Without this change, a third-country national who resides in the United States but performs self-employment in Switzerland would be covered by both countries, and the Agreement would not eliminate this dual coverage. As a result of the revision, the person will be covered only by the United States.

Under the Swiss social security system, a person is covered and required to pay contributions if he works in Switzerland or, if not working, is domiciled there. Article 8 of the original Agreement authorizes the U.S. and Swiss Competent Authorities to agree to exceptions to the coverage rules of the Agreement in the case of persons who are employed or self-employed. Article 2 of this Supplementary Agreement would revise Article 8 to authorize exceptions in the case of persons whose coverage is based on their domicile in Switzerland.

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Article 3

1. Paragraph 3 of Article 13 of the Agreement shall be revised to read as follows:

"3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount."

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1

Article 13 of the original 1979 Agreement establishes the basic rules for determining entitlement to and the amount of U.S. benefits for persons who have worked in both countries. Under these rules, if a worker has at least six quarters of coverage under the U.S. Social Security program, the worker's coverage credits from both countries can be totalized, i.e., combined, to qualify for a U.S. benefit. If entitlement is established based on totalized credits, the amount of the benefit is determined by combining earnings records from both countries to compute a theoretical U.S. benefit amount. This amount is then prorated to establish a partial benefit based on the ratio of periods of coverage completed in the United States to the total periods completed in both countries. This computation method is the one which was used in the first three Social Security agreements concluded by the United States--with Italy, West Germany, and Switzerland.

Experience in implementing those three agreements has shown that using foreign earnings information to compute U.S. benefit amounts is cumbersome for both the United States and the other country. A substantial amount of time may be required in some cases to secure foreign earnings records, resulting in long delays in adjudicating U.S. totalization benefit claims.

To avoid the problems created by using foreign earnings data, regulations of the Department of Health and Human Services (20 CFR 404.1918) now provide a new method of computing U.S. totalization benefits within the parameters of section 233 of the Social Security Act. The revised regulations were published as a final rule in the Federal Register on July 20, 1984 (Vol. 49, No. 143, pp. 29771-29777). Under the new method, totalization benefit amounts are computed based on periods of coverage and earnings credited exclusively under U.S. law. All the social

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security agreements negotiated and submitted to Congress after the agreements with Italy, West Germany and Switzerland have been drafted so that they authorize the new method. Supplementary agreements have also been concluded to authorize the new method under the agreements with Italy and West Germany. Under the revised regulations, the original computation method continues to apply under the Agreement with Switzerland until such time as it is amended to permit use of the new method.

Article 3.1 of the U.S.-Swiss Supplementary Agreement would revise Article 13.3 of the original 1979 Agreement to permit the United States to use the new computation method. The new method will shorten processing time and expedite the payment of totalization benefits. Under this method, the United States will compute the theoretical benefit on the basis of a worker's earnings level during the period he was actually covered under U.S. Social Security. The theoretical benefit will then be prorated to reflect the proportion of a coverage lifetime actually completed under the U.S. program. A coverage lifetime is defined in the revised regulations (20 CFR 404.1918(d)(2)) as the number of the worker's benefit computation years--i.e., the years which must be used in determining a worker's average earnings under the regular U.S. national computation method.

Under the new method, the theoretical benefit amount approximates the benefit to which the worker would have been entitled had he worked a full lifetime under the U.S. system at the same relative earnings level as during his actual periods of U.S. coverage. The pro rata benefit that is payable reflects the portion of the worker's coverage lifetime spent under the U.S. system. The new method is comparable to the computation methods used by many Western European countries, which compute totalization benefits based solely on earnings under their own social security systems.

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2. Paragraph 4 of Article 13 of the Agreement shall be deleted.

ANNOTATIONS AND COMMENTS

Article 13.4 of the original 1979 Agreement authorizes the United States to take into account the dollar equivalent of a worker's covered earnings in Switzerland in computing a totalization benefit. Since the new U.S. totalization computation method is based solely on a worker's covered earnings under the U.S. system, Article 3.2 of this Supplementary Agreement would delete Article 13.4 of the original Agreement.

Article 4

In the Final Protocol to the Agreement:

1. Paragraphs 3 and 4 shall be deleted.

Article 4.1 of the Supplementary Agreement will delete two provisions of the original Agreement which are no longer necessary. A drafting error in the 1977 law that authorized the United States to enter into international social security agreements prevented the United States from imposing social security taxes on certain earnings which would have been covered by the U.S. Social Security system pursuant to the coverage rules ordinarily included in such agreements. For this reason, it was necessary to include a proviso in paragraph 3 of the Final Protocol to the U.S.-Swiss Agreement (and in other early U.S. social security agreements) to make clear that the Agreement would not result in U.S. coverage if there were no authority under U.S. law to collect taxes with respect to that coverage. A provision in the Social Security Amendments of 1983, however, authorizes the U.S. to collect Social Security taxes on earnings covered under a section 233 agreement, thus correcting the deficiency in the original 1977 legislation. With this change in the law, paragraph 3 of the Final Protocol to the U.S.-Swiss Agreement has become inoperative, and Article 4.1 of the Supplementary Agreement would therefore delete it.

With regard to the deletion of paragraph 4 of the Final Protocol, see the annotation to Article 1 of the Supplementary Agreement as it pertains to the revision of Article 6.2 of the Agreement.

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2. The following paragraph shall be added immediately after paragraph 5:

"5A. Where the same activity is considered to be self-employment under the laws of one Contracting State and employment under the laws of the other Contracting State, that activity shall be treated according to the provisions of Article 6.3 if the person is a resident of the first Contracting State and according to the provisions of Article 6.1 or 6.2 in any other case."

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The new paragraph 5(A) of the Final Protocol would eliminate dual coverage in cases where a person's work activity is considered self-employment under the laws of one country and employment under the laws of the other and is compulsorily covered by both countries. Under paragraph 5(A), a person who is a resident of the country which considers him to be self-employed will be subject to the residence rule that applies to self-employment under Article 6.3 and the person will therefore be covered by that country. A person who is not a resident of the country which considers him to be self-employed will be subject to the provisions of Article 6.1 or 6.2 regarding employment. In this case, the person will be subject to the laws of the country where the work is performed or, if the conditions of Article 6.2 regarding temporary transfers are met, the country from which the person was sent.

Article 5

1. The third sentence of paragraph 2 of Article 6 of the Agreement, as revised by this Supplementary Agreement, shall apply as though it had been included in the Agreement from the date the Agreement entered into force.

2. Article 3 of this Supplementary Agreement shall apply to any application for benefits filed in accordance with the Agreement, provided that no final decision has been made on such application in accordance with United States laws by the date on which this Supplementary Agreement enters into force.

3. Article 3 of this Supplementary Agreement shall also apply as of the date it enters into force to any recomputation of benefits which are payable under the Agreement.

Article 5.1 provides for retroactive application of the third sentence of Article 6.2 of the Agreement, as revised by Article 1 of this Supplementary Agreement. (See the annotation to Article 1 for an explanation of that sentence.)

Article 5.2 stipulates that the new U.S. totalization computation method (see Article 3.1 of this Supplementary Agreement) will apply to any application for benefits under the Agreement that has not been finally adjudicated at the time the Supplementary Agreement takes effect. Article 5.3, like the supplementary social security agreements the United States has concluded with Italy and West Germany, authorizes the United States to use the new computation method after the Supplementary Agreement enters into force when recomputing benefits payable under the Agreement to persons with U.S. covered earnings credited after entitlement.

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

Article 6

1. The Government of each of the Contracting States shall notify the other of the fulfillment of its statutory and constitutional requirements for the entry into force of this Supplementary Agreement; this Supplementary Agreement shall enter into force on the first day of the month following the date of receipt of the last of these notifications.

Article 6.1 provides that each country will follow its own procedures for approval of the Supplementary Agreement. In Switzerland, the Supplementary Agreement is subject to Parliamentary review. In the United States, it must be presented to the Congress for a review period during which at least one House has been in session on each of 60 days as required by section 233(e) of the Social Security Act. The Supplementary Agreement will enter into force on the first day of the calendar month after each Government has received formal notification of approval from the other Government.

2. This Supplementary Agreement shall remain in force for the same period and under the same conditions as the Agreement.

The Supplementary Agreement will remain in effect for the same period as the Agreement.

DONE at Bern on June 1, 1988, in duplicate, in the English and French languages, both texts being equally authentic.

The supplementary agreement was signed in Bern on June 1, 1988, by the U.S. Ambassador, Faith Ryan Whittlesey, and the Director of the International Social Security Division of the Swiss Federal Social Insurance Office, Verena Brombacher.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Faith Ryan Whittlesey

FOR THE SWISS FEDERAL COUNCIL:

Verena Brombacher

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT

ANNOTATIONS AND COMMENTS

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT AMENDING THE ADMINISTRATIVE AGREEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY

In conformity with Article 14, paragraph (a), of the Agreement between the United States of America and the Swiss Confederation on Social Security of July 11, 1979 (hereinafter referred to as the "Agreement"), as amended by the Supplementary Agreement of June 1, 1988,

Amendments to the Administrative Agreement for the Implementation of the Agreement, signed on December 20, 1979, (hereinafter referred to as the "Administrative Agreement"), have been agreed to as follows:

Article 1

Article 3, paragraph 3, of the Administrative Agreement shall be revised to read as follows:

"3. Requests for an extension of the period of detachment shall be submitted to the Competent Authority or, with its authorization, to the liaison agency of the Contracting State from whose territory the employee is sent. The Competent Authorities shall communicate their decisions to the appropriate agencies of their respective countries."

Article 1 would revise Article 3.3 of the Administrative Agreement to conform to the revised text of Article 6.2 of the principal Agreement. (See the annotations to Article 1 of the Supplementary Agreement regarding the revisions to Article 6.2 of the Agreement.)

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT

Article 2

Article 5 of the Administrative Agreement shall be revised to read as follows:

"In the application of Article 13 of the Agreement, the Swiss liaison agency shall notify the United States liaison agency of the months in which a person completed periods of coverage under Swiss laws. A record of the total number of months of coverage in specific calendar years shall be provided where the actual months of coverage are not known."

ANNOTATIONS AND COMMENTS

1

Article 2 would revise paragraph 1(a) of Article 5 of the Administrative Agreement and delete the other provisions in Article 5. The deleted provisions--Article 5.1(b), 5.2, and 5.3--are no longer needed because they pertain to procedures that will no longer apply once the new U.S. totalization benefit computation method introduced by the Supplementary Agreement is implemented.

Article 5.1(b), which refers to the furnishing of Swiss earnings records by the Swiss liaison agency to the Social Security Administration, is no longer necessary, because under the new U.S. computation method, such earnings would not be taken into account. Article 5.2 deals with the recomputation of U.S. totalization benefits to take account of post-entitlement coverage under the U.S. and Swiss systems. This provision is no longer necessary, because under the new U.S. totalization computation method, the United States will not recompute totalization benefits based on additional Swiss coverage, and procedures regarding recomputations based on additional U.S. coverage are now included in HHS regulations promulgated since the 1979 Administrative Agreement was negotiated (20 CFR 404.1919).

The change in Article 5 will also permit the crediting under U.S. law of certain periods of Swiss noncontributory coverage. Under Swiss law, a person who is domiciled in Switzerland receives social security coverage credit even if the person does not derive earnings from work. Although such persons must generally pay social security contributions (based on the amount of their assets and periodic income), the non-working wife of a man who is covered under the Swiss social security system receives the coverage credit without being required to pay contributions. Because article 5.1 of the Administrative

ANNEX B

REPORT TO CONGRESS ON THE FINANCIAL EFFECT OF THE
UNITED STATES-SWISS SUPPLEMENTARY
SOCIAL SECURITY AGREEMENT

Under the subject supplementary agreement, the basic provisions of the original agreement regarding the elimination of dual coverage and taxation remain unchanged. The supplementary agreement contains several provisions that clarify the interpretation and intent of the original agreement and adapt the original agreement to changes in U.S. and Swiss social security laws that have occurred since it was negotiated. These clarifying provisions relate to the coverage under the agreement of certain third-country nationals and of non-working family members who accompany employees affected by the agreement. The net cost effect of these provisions is estimated to be very small because of the correspondingly small populations affected.

The proposed supplementary agreement further authorizes the United States to use a simplified method of computing benefit amounts to be paid from the U.S. system under the original agreement. This method imputes earnings for periods of Swiss coverage to workers whose eligibility for U.S. benefits depends on that coverage. Based on a small sample of cases examined at the time of a similar modification to the totalization agreement with Italy, it is estimated that this provision would result in a net cost to the U.S. Social Security system of less than $500,000 per year over the period fiscal years 1988-93.

ANNEX C

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY

The President of the United States of America and the Swiss Federal Council,

Being desirous of regulating the relationship between their two countries in the field of Social Security, have agreed to conclude an Agreement for that purpose and have therefore appointed as their plenipotentiaries:

For the President of the United States of America: Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare.

For the Swiss Federal Council: Raymond Probst, Ambassador Extraordinary and Plenipotentiary of the Swiss Confederation to the United States of America who, having exchanged their full powers, found to be in good and due form, have agreed to the following provisions:

PART I.—DEFINITIONS AND LAWS

Article 1

For the purposes of this Agreement:

1. "Territory" means, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards Switzerland, the territory of the Swiss Confederation;

2. "National" means, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and as regards Switzerland, a person of Swiss nationality;

3. "Laws" means the laws and regulations specified in Article 2;

4. "Competent Authority" means, as regards the United States, the Secretary of Health, Education, and Welfare, and as regards Switzerland, the Federal Social Insurance Office;

5. "Agency" means, as regards the United States, the Social Security Administration, and as regards Switzerland, a compensation fund of the Old-Age and Survivors Insurance and the other bodies responsible for the administration of Disability Insurance;

6. "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

7. "Benefits" ("Prestations") means any benefit in cash or in kind as provided for in the laws of either Contracting State;

8. "Family member" means a person eligible for benefits based on the periods of coverage of a living person as established under the laws of each of the Contracting States;

9. "Survivor" means a person eligible for benefits based on the periods of coverage of a deceased person as established under the laws of each of the Contracting States;

10. "Stateless person" means a person defined as a stateless person in Article 1 of the Convention Relating to the Status of Stateless Persons dated September 28, 1954; and

11. "Refugee" means a person defined as a refugee in Article 1 of the Convention Relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967.

Article 2

1. For the purpose of this Agreement, the applicable laws are:

a. As regards Switzerland, the Federal laws governing—

—Old-Age and Survivors Insurance,

—Disability Insurance;

b. As regards the United States, the laws governing the Federal Old-Age, Survivors, and Disability Insurance Program:

—Title II of the Social Security Act and regulations promulgated under the authority provided in the Social Security Act, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,

—Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters.

2. Laws within the meaning of paragraph 1 shall not include treaties or other international agreements concluded between one Contracting State and a third State or laws or regulations promulgated for their specific implementation.

PART II—GENERAL PROVISIONS

Article 3

Unless otherwise provided, this Agreement shall apply to:

(*a*) nationals of either Contracting State,

(*b*) refugees who reside in either Contracting State,

(*c*) stateless persons who reside in either Contracting State,

(*d*) other persons, including family members and survivors, with respect to the rights they derive from persons in categories (a), (b) and (c).

Article 4

Unless otherwise provided in this Agreement or the Final Protocol, nationals of one Contracting State shall, in the application of the laws of the other Contracting State, receive equal treatment with the nationals of the other Contracting State.

Article 5

The Agreement shall not prevent the application of provisions of the laws of either Contracting State concerning benefits that are more favorable to the persons listed in Article 3.

PART III.—PROVISIONS ON COVERAGE

Article 6

person of any nationality

1. Unless otherwise provide in Part III of the this Agreement or the Final Protocol, ~~a national of either Contracting State~~ who is employed in the territory of either Contracting State shall be subject, with respect to employment in that territory, to the laws on compulsory coverage of the Contracting State where the person is employed, and, in determining the amount of contributions payable under the laws of that Contracting State, no account shall be taken of any income the person may receive from employment in the territory of the other Contracting State.

~~2. Where a person in the service of an employer having a place of business in the territory of a Contracting State is sent by that employer to the territory of the other Contracting State for a limited period, the person shall be subject to the laws on compulsory coverage of only the first Contracting State, provided that his employment in the territory of the other Contracting State is not expected to last for more than five years or such longer period as may be agreed upon by the Competent Authorities in a particular case.~~

(NEW) 2. Where a person of any nationality is in the service of an employer having a place of business in the territory of a Contracting State and is sent by that employer to the territory of the other Contracting State for a period not expected to exceed 5 years, the person shall be subject to the laws on compulsory coverage of only the first Contracting State as if he were employed in its territory. If, before the end of 5 years, the employer who requested an exemption for a person on temporary assignment requests an extension of the period of exemption, this extension may be granted by way of exception if the Competent Authority of the State from whose territory the person was sent considers the request to be justified and, based on this fact, presents the application for extension to the Competent Authority of the other Contracting State and obtains the consent of the latter State. The spouse and children who accompany a person who is sent temporarily in conformity with the preceding two sentences of this paragraph shall remain subject to the laws on compulsory coverage of only the State from whose territory the worker was sent for any period during which they are not employed or self-employed in the territory of the other State.

3. A person of any nationality ~~[national of either Contracting State]~~ who is self-employed in the territory of either Contracting State and who is a resident of one Contracting State shall be subject to the laws on compulsory coverage of only the Contracting State in whose territory he resides.

Article 7

1. Part III of this Agreement shall not apply to the categories of persons listed in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, and of the Vienna Convention on Consular Relations of April 24, 1963.

2. Nationls of one of the Contracting States not listed in the provisions of the Vienna Conventions mentioned in paragraph 1, employed by that Contracting State in the territory of the other Contracting State, shall be subject to the laws on compulsory coverage of only the first Contracting State.

Article 8

The Competent Authority of one Contracting State may grant an exception to the provisions of Part III of this Agreement if the Competent Authority of the other Contracting State agrees, provided that the affected ~~[employed or self-employed]~~ person will be subject to the laws on compulsory coverage of one of the Contracting States.

Part IV.—Provisions on Benefits

Chapter 1.—Application of Swiss Laws

Article 9

A contribution period of at least one year shall be required for entitlement to Swiss ordinary Old-Age, Survivors and Disability Insurance Pensions intended for United States nationals.

Article 10

1. United States nationals may claim rehabilitation measures of the Swiss Disability Insurance as long as they maintain their domicile in Switzerland and provided they have, immediately prior to eligibility for such measures, paid contributions under Swiss laws for at least one year.

2. Spouses and widows of United States nationality not gainfully employed, as well as children under age of the same nationality, may claim rehabilitation measures of the Swiss Disability Insurance as long as they maintain their domicile in Switzerland and provided they have resided in Switzerland without interruption for at least one year immediately prior to eligibility for such measures. Children under age of the same nationality may, moreover, claim such measures if they are domiciled in Switzerland and have been born invalids in Switzerland or have resided in Switzerland without interruption since birth.

Article 11

1. Where the right to an ordinary pension under Swiss laws depends on a current affiliation with Swiss Old-Age, Survivors and Disability Insurance, a United States national shall satisfy such requirement if, on the date the insured event occurs according to Swiss laws, the United States national has a record of current coverage under United States laws.

2. Ordinary pensions for insured persons with a disability inferior to 50 percent shall be paid to United States nationals only as long as they maintain their domicile in Switzerland.

Article 12

United States nationals shall only be entitled to extraordinary pensions under Swiss laws if they (1) maintain their domicile in Switzerland and (2) show proof that immediately prior to the month in which they apply for pensions they have resided in Switzerland without interruption for

(*a*) at least ten full years if applying for an old-age pension, or

(*b*) at least five full years if applying for a disability or survivors pension, or for an old-age pension which would replace a disability or survivors pension.

CHAPTER 2.—APPLICATION OF UNITED STATES LAWS

Article 13

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, periods of coverage completed under Swiss laws shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.

2. In determining eligibility for benefits under paragraph 1 of this Article, the agency of the United States shall credit one quarter of coverage for every three months of coverage certified as creditable by the agency of Switzerland to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

~~[3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, a pro rata primary insurance amount shall be computed based on the ratio of the total periods of coverage completed under United States laws to the total periods of coverage completed under the laws of the two Contracting States. Benefits payable under United States laws on the basis of an earnings record where a pro rata primary insurance amount has been computed shall be paid on the basis of that pro rata primary insurance amount.]~~

(NEW) 3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount.

~~[4. For any calendar quarter not already a quarter of coverage under United States laws, the agency of the United States shall take into account for purposes of computing a pro rata primary insurance amount the amount of any earnings credited to the person in that period under Swiss laws, subject to the maximum annual creditable earnings limitation under United States laws.]~~

5. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to a higher benefit without the need to invoke the provision of paragraph 1.

Part V.—Miscellaneous Provisions

Article 14

The Competent Authorities of the two Contracting States shall:

(*a*) Make all necessary administrative arrangements for the application of this Agreement;

(*b*) Define the procedures for reciprocal administrative assistance, including the allocation of expenses associated with obtaining medical, administrative, and other evidence required for the application of this Agreement;

(*c*) Communicate to each other information concerning the measures taken for the application of this Agreement; and

(*d*) Communicate to each other, as soon as possible, information concerning all changes in their respective laws.

Article 15

1. The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement. This assistance shall be free of charge subject to exceptions to be agreed upon in an administrative agreement.

2. Liaison agencies for the implementation of this Agreement shall be:

(*a*) for the United States, the Social Security Administration; and

(*b*) for Switzerland, the Swiss Compensation Office.

Article 16

Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an agency of the other Contracting State in accordance with its laws.

Article 17

1. The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever he may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.

2. An application or document may not be rejected because it is in an official language of the other Contracting State.

3. The notices of decisions of an agency or a tribunal which under the laws of a Contracting State require personal delivery may be transmitted directly by registered letter to a person in the territory of the other Contracting State.

Article 18

1. 1. A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant (*a*) requests that it be considered an application under the laws of the other Contracting State or (*b*) in the absence of a request that it not be so considered, provides information indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

2. An applicant may request that an application submitted to an agency of one Contracting State be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.

3. The provisions of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

Article 19

1. A written appeal of a determination made by an agency of one Contracting State may be validly filed with an agency of the other Contracting State.

2. Any claim, notice or appeal which must be filed within a given period of time with an agency of one Contracting State shall be considered to have been timely filed if the claim, notice or appeal has been filed within such period with a corresponding agency of the other Contracting State. In such case, the agency with which the claim, notice or appeal has been filed shall indicate the date of receipt of the document on this document and transmit it without delay to the liaison agency of the other Contracting State.

Article 20

1. The amount of any benefit due in accordance with the provisions of this Agreement shall be paid in the currency of the Contracting State whose agency is responsible for such benefit.

2. In case provisions designed to restrict the exchange of currencies are isued in either Contracting State, the Governments of the two Contracting States shall decide on the measures necesary to assure the transfer of sums owed by either Contracting State under this Agreement.

Article 21

Any disagreement between the Contracting States concerning the interpretation or implementation of this Agreement which has not been settled within six months shall, at the request of either Contracting State, be submitted to an arbitral tribunal of three members. Each Contracting State shall appoint one member. These two members shall select the presiding member. Should the members disagree on the nomination of the presiding member, the presiding member will be appointed by the President of the International Court of Justice. The arbitral tribunal shall establish its own procedure. The decision of the arbitral tribunal shall be binding on the Contracting States.

PART VI.—TRANSITIONAL AND FINAL PROVISIONS

Article 22

1. This Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force.

2. This Agreement shall not establish any claim to payment of a benefit for any periods before its entry into force or a lump-sum death benefit if the person died before its entry into force.

3. Consideration shall be given to any period of coverage and any period of residence under the laws of either Contracting State occurring before the entry into force of this Agreement, in order to determine the right to benefits under this Agreement.

4. This Agreement shall not apply to rights settled by a lump-sum payment or refund of contributions.

5. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

6. This Agreement shall not result in the reduction of cash benefit amounts because of its entry into force.

Article 23

The attached Final Protocol shall form an integral part of this Agreement.

Article 24

The Agreement embodied in the exchange of notes between the Swiss Federal Political Department and the Ambassador of the United States of America in Bern of June 27, 1968, concerning the reciprocal payment of certain old-age, survivors and disability benefits is terminated effective with the date of entry into force of the present Agreement.

Article 25

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

Article 26

This agreement shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry force of this Agreement.

IN WITNESS WHEREOF, the plenipotentiaries of the Contracting States being duly authorized thereto, have signed the present Agreement.

DONE at Washington on July 18, 1979, in duplicate, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Joseph A. Califano, Jr.

FOR THE SWISS FEDERAL COUNCIL:

Raymond Probst

FINAL PROTOCOL TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY

At the time of signing the Agreement between the United States of America and the Swiss Confederation on Social Security, the undersigned plenipotentiaries stated that they are in agreement on the following points:

1. With respect to Article 4, persons designated in Article 3(b) (c) or (d) who reside in the territory of Switzerland shall receive benefits provided by the laws of the United States under the same conditions as United States nationals who reside in Switzerland.

2. Article 4 shall not apply to provisions of Swiss laws on (a) voluntary Old-Age, Survivors and Disability Insurance of Swiss nationals residing abroad; (b) Old-Age, Survivors and Disability Insurance of Swiss nationals working abroad on account of an employer in Switzerland; (c) welfare benefits ("allocations de secours") granted to Swiss nationals residing abroad; or (d) helplessness allowances ("allocations pour impotents").

~~3. Article 4 and Article 6 of the Agreement shall not apply where they would result in coverage under the laws of the United States and there is no provision under such laws for contributions with respect to such coverage.~~

~~4. Unless otherwise provided in the Agreement or this Final Protocol, Article 6.2 shall apply to a person sent by an employer located in the territory of Switzerland to the territory of the United States, regardless of nationality of the person; provided, however, that this paragraph shall not supersede any provisions of another treaty or international agreement between a Contracting State and a third State.~~

5. Article 6.2 shall apply in cases where a person is employed in the territory of a third State, but compulsorily covered under the laws of one of the Contracting States, and is then sent by his employer to the territory of the other Contracting State.

(NEW) 5A. Where the same activity is considered to be self-employment under the laws of one Contracting State and employment under the laws of the other Contracting State, that activity shall be treated according to the provisions of Article 6.3 if the person is a resident of the first Contracting State and according to the provisions of Article 6.1 or 6.2 in any other case.

6. With respect to Article 10.2, the duration of residence of a United States national in Switzerland shall be considered as uninterrupted by a sojourn outside the territory of Switzerland for a period not exceeding two months within a period of one year.

7. With respect to Article 11.1, a United States national shall be considered to have a record of current coverage under United States laws if he is entitled to a benefit under such laws or has credit for at least four quarters of coverage under such laws during a period of eight calendar quarters ending with the calendar quarter (a) in which the insured event occurs according to Swiss laws or (b) immediately preceding the calendar quarter in which the insured event occurs according to Swiss laws.

8. Article 11.1 notwithstanding, United States nationals with a disability inferior to 66⅔ percent may claim an ordinary pension of the Swiss Disability Insurance only as long as they are currently affiliated with Swiss Old-Age, Survivors and Disability Insurance at the date the insured event occurs.

9. United States nationals not domiciled in Switzerland who have to give up their gainful activity in Switzerland because of an injury or disease and who stay in Switzerland until the insured event occurs, are considered as being currently affiliated with Swiss laws and may claim benefits of the Disability Insurance. They shall have to pay contributions to Old-Age, Survivors and Disability Insurance as if they were domiciled in Switzerland.

10. With respect to Article 12, the duration of residence of a United States national in Switzerland shall be considered as uninterrupted by a sojourn outside the territory of Switzerland for a period not exceeding three months within a calendar year. However, a period of residence in Switzerland during which a United States national has been exempt from coverage under Swiss laws shall not be considered in determining if the period of residence required under Article 12 has been completed.

11. The refund of contributions paid under Swiss laws, carried out in accordance with Swiss laws on the refund of contributions to foreigners and stateless persons, shall not bar the payment of extraordinary pensions in accordance with Article 12; provided, however, that contributions refunded shall be charged against benefits to be paid.

12. With respect to Article 13, in accordance with section 233(c)(3) of the United States Social Security Act, the Agreement shall not apply to entitlement to hospital insurance benefits provided under sections 226 and 226A of that Act.

13. Article 13 shall also apply to nationals of a State other than a Contracting State who are not included among the persons referred to in Article 3(d).

14. With respect to Switzerland, appeals which must be filed within a given period of time with a tribunal in Switzerland shall be considered to have been timely filed if it is shown that the appeal has been filed within such period with the agency or a court in the United States.

DONE at Washington on July 18, 1979, in duplicate, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Joseph A. Califano Jr.

FOR THE SWISS FEDERAL COUNCIL:

Rozanne Ridgway

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT

ANNOTATIONS AND COMMENTS

Agreement, as originally drafted, provides that the Swiss liaison agency will only report periods of contributory coverage to the U.S. Social Security Administration, the United States could not take into account periods of noncontributory coverage when determining eligibility for totalization benefits under the Agreement. Under Article 3, as revised by Article 2 of this Supplementary Administrative Agreement, the periods of Swiss coverage to be reported by the Swiss liaison agency and taken into account by the U.S. Social Security Administration will include the periods of noncontributory coverage credited to non-working wives.

Article 2

This Supplementary Administrative Agreement shall enter into force on the date of entry into force of the Supplementary Agreement of June 1, 1988 amending the Agreement.

This Supplementary Administrative Agreement will enter into force on the same date as the Supplementary Agreement.

DONE at Bern on June 1, 1988, in duplicate, in the English and French languages, both texts being equally authentic.

The supplementary administrative agreement was signed in Bern on June 1, 1988, by the U.S. Ambassador, Faith Ryan Whittlesey, and the Director of the International Social Security Division of Switzerland's Federal Social Insurance Office, Verena Brombacher.

FOR THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES:	FOR THE SWISS FEDERAL SOCIAL INSURANCE OFFICE:
Faith Ryan Whittlesey	Verena Brombacher

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ADMINISTRATIVE AGREEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY OF JULY 18, 1979

In conformity with Article 14(a) of the agreement on Social Security concluded on July 18, 1979 between the United States of America and Switzerland, herein after referred to as "the Agreement", the following provisions have been agreed upon:

CHAPTER 1.—GENERAL PROVISIONS

Article 1

Terms used in this Administrative Agreement shall have the same meaning as in the Agreement.

Article 2

The Swiss Competent Authority or, with its consent, the Swiss liaison agency, and the United States liaison agency shall agree upon joint administrative measures and forms necessary for the implementation of the Agreement and this Administrative Agreement.

CHAPTER 2.—PROVISIONS CONCERNING THE APPLICABLE LAWS

Article 3

1. In cases where Article 6.2 of the Agreement applies, the agency of the Contracting State whose laws are applicable shall issue upon request of the employer a certificate stating that the concerned employee remains subject to these laws. The certificate shall be proof that the employee is exempt from the laws on compulsory coverage of the other Contracting State.

2. The certificate referred to in paragraph 1 shall be issued:

In the United States: By the Social Security Administration.

In Switzerland: By the competent compensation fund of the Old-Age and Survivors Insurance.

~~3. If the duration of a transfer must be prolonger beyond the period of 5 years referred to in Article 6.2 of the Agreement, and both the employer and employee wish the applicable laws on compulsory coverage to continue to apply in accordance with Article 6.2 once that period expires, they must request an extension before the expiration of the 5 year period. If it is expected before the transfer that its duration will exceed 5 years, the request to extend the 5 year period must be made before the transfer takes place. Such requests shall be submitted to the Competent Authority or, with its consent, to the liaison agency of the~~

~~Contracting State from whose territory the employee is sent. These authorities shall express their agreement through an exchange of letters and shall communicate their decisions to the concerned agency of their country.~~]

(NEW) 3. Requests for an extension of the period of detachment shall be submitted to the Competent Authority or, with its authorization, to the liaison agency of the Contracting State from whose territory the employee is sent. The Competent Authorities shall communicate their decisions to the appropriate agencies of their respective countries.

CHAPTER 3.—PROVISIONS CONCERNING BENEFITS

Article 4

1. In cases where Article 18 of the Agreement applies the liaison agency of the Contracting State which has received an application for benefits under its laws shall inform the liaison agency of the other Contracting State of this fact without delay, using forms established for this purpose. It shall also transmit documents and such other available information as may be necessary for the agency of the other Contracting State to establish the the right of the applicant to benefits according to the provisions of Part IV of the Agreement. In the case of an application for disability benefits it shall, in particular, transmit all relevant medical evidence in its possession concerning the disability of the applicant.

2. The liaison agency of a Contracting State which receives an application filed with an agency of the other Contracting State shall without delay provide the liaison agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim.

3. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the aplicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

Article 5

~~[1. In the application of Article 13 of the Agreement the following shall apply:~~

~~(a) The Swiss liaison agency shall notify the United States liaison agency of months in which a person made contributions during any year in which periods of coverage were completed under Swiss laws. A record of the total number of months of contributions in any such year shall be provided where the actual contribution months are not known.~~

~~(b) The Swiss liaison agency shall also notify the United States liaison agency of the amount of the person's creditable income in any year for which periods of contributions were completed under Swiss laws. The amount of the income to be reported for any such year may be derived from the contributions paid during that year.~~]

~~9. Benefits awarded by the agency of the United States under Article 13 of the Agreement shall be recomputed in accordance with the laws of the United States to take account of additional periods of coverage completed under the laws of either Contracting State. An application for such a recomputation shall be required only where the additional periods of coverage have been completed under Swiss laws.~~

~~8. Periods of coverage completed after the last computation base year provided under United States laws shall not be considered in determining the ratio referred to in Article 13.3 of the Agreement.~~

(NEW) In the application of Article 13 of the Agreement, the Swiss liaison agency shall notify the United States liaison agency of the months in which a person completed periods of coverage under Swiss laws. A record of the total number of months of coverage in specific calendar years shall be provided where the actual months of coverage are not known.

CHAPTER 4.—MISCELLANEOUS PROVISIONS

Article 6

In accordance with measures to be agreed upon pursuant to Article 2 of this Administrative Agreement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in Article 21 of the Agreement.

Article 7

Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 8

The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number of beneficiaries and the total amount of benefits, by type of benefit.

Article 9

1. Where administrative assistance is requested under Article 15 of the Agreement, expenses other than regular personnel and operating costs of the Competent Authorities and agencies providing the assistance shall be reimbursed.

2. Where the agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that agency, shall be arranged by the agency of the other Contracting State in which the claimant or beneficiary resides, in accordance with the rules of the agency making the arrangements and at the expense of the agency which requests the examination.

3. Upon request, the agency of either Contracting State shall furnish without expense to the liaison agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.

4. Amounts owed under paragraphs 1 and 2 shall be reimbursed upon presentation of a detailed statement of expenses.

Article 10

Unless authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 11

This Administrative Agreement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

DONE, at Bern on December 20th, 1979, in duplicate in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE SWISS FEDERAL SOCIAL INSURANCE OFFICE: